

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

WILLIAM DAVIS, III)	
)	
Plaintiff,)	C.A. No. 04-CV-209 SLR
)	
v.)	
)	
FIRST CORRECTIONAL MEDICAL,)	TRIAL BY JURY OF
INC., et al.,)	TWELVE DEMANDED
)	
Defendants.)	

**MOTION FOR SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 37 (b)(2) FOR PLAINTIFF'S FAILURE TO ABIDE BY COURT
ORDER DATED AUGUST 12, 2008 (D.I. 106)**

NOW COMES, Defendants in the above matter and requests sanctions of dismissal pursuant to Rule 37(b)(2)(ii), also 37 (b)(2)(v) and 37(b)(2)(vi). In support hereof, defendants offer the following:

1. On August 12, 2008, the Court issued an Order (D.I. 106) Ordering the Plaintiff to provide Answers to Interrogatories and Responses to Request for Production of Documents within 10 days.
2. Federal Rule of Civil Procedure 37(b)(2) allows:

“sanctions in the district where the action is pending”. (a) for not obeying a discovery order. If a party or ... fails to obey an order to provide or permit discovery..., the Court where the action is pending may issue further just Orders. They may include the following:

 - (i) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters into evidence;
 - (ii) Striking pleadings in whole or in part;
 - (iii) Dismissing the action or proceeding in whole or in part;
 - (iv) Rendering a default judgment against the disobedient party; or

- (v) Treating as contempt of court the failure to obey any Order except an Order to submit to a physical or mental examination.

3. Plaintiff has violated the Court Order of August 12, 2008 as Defendants' counsel has not received Answers to Interrogatories or Responses to Request for Production of Documents as of August 29, 2008.

WHEREFORE, Defendants requests that the Complaint against them be stricken from the record, that plaintiff be prohibited from supporting his claims and from introducing evidence supporting his claims, and that the Complaint against them be dismissed with prejudice.

Respectfully submitted,

Heckler & Frabizzio, P.A.



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Dated: August 29, 2008
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